(4)

No. 91-489

FILED

OCT 17 1991

OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1991

OMAHA INDIAN TRIBE, TREATY OF 1854, ORGANIZED PURSUANT TO THE ACT OF JUNE 18, 1934 (48 STAT. 984; 25 U.S.C. 476) AS AMENDED,

Petitioner,

v.

AGRICULTURAL & INDUSTRIAL INVESTMENT COMPANY; JOHN R. WILSON; CHARLES E. LAKIN, FLORENCE LAKIN; R.G.P., INC., AN IOWA CORPORATION; HAROLD JACKSON; OTIS PETERSON; DARRELL L. HAROLD, and LUEA SORENSON; STATE OF IOWA and IOWA DEPARTMENT OF NATURAL RESOURCES, et al.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF RESPONDENTS, AGRICULTURAL & INDUSTRIAL INVESTMENT COMPANY and DONALD L. RUPP, IN OPPOSITION

GEORGE F. MADSEN*
MARKS & MADSEN
Suite 303, 700 Fourth Street
P. O. Box 3226
Sioux City, IA 51102
712/258-1200

Counsel for Agricultural & Industrial Investment Company

*Counsel of Record

PETER J. PETERS
233 Pearl Street
P. O. Box 938
Council Bluffs, IA 51502
712/328-3157

Counsel for Donald L. Rupp

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. WHETHER THE EIGHTH CIRCUIT COURT OF APPEALS ERRED IN CONCLUDING THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DISMISSING WITH PREJUDICE PETITIONER'S COMPLAINT.

2. WHETHER THE EIGHTH CIRCUIT COURT OF APPEALS ERRED IN ASSESSING AGAINST PETITIONER DOUBLE COSTS OF THE APPEAL.

3. WHETHER THIS COURT SHOULD IMPOSE SANCTIONS AGAINST PETITIONER AND ITS COUNSEL FOR SCANDALOUS STATEMENTS IN THIS PETITION FOR WRIT OF CERTIORARI.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

No. 91-489

In The

Supreme Court of the United States

October Term, 1991

OMAHA INDIAN TRIBE, TREATY OF 1854, ORGANIZED PURSUANT TO THE ACT OF JUNE 18, 1934 (48 STAT. 984; 25 U.S.C. 476) AS AMENDED,

Petitioner,

v.

AGRICULTURAL & INDUSTRIAL INVESTMENT COMPANY; JOHN R. WILSON; CHARLES E. LAKIN, FLORENCE LAKIN; R.G.P., INC., AN IOWA CORPORATION; HAROLD JACKSON; OTIS PETERSON; DARRELL L. HAROLD, and LUEA SORENSON; STATE OF IOWA and IOWA DEPARTMENT OF NATURAL RESOURCES, et al.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF RESPONDENTS, AGRICULTURAL & INDUSTRIAL INVESTMENT COMPANY and DONALD L. RUPP, IN OPPOSITION

RESPONDENTS' STATEMENT OF THE CASE

The issue in this case is whether the District Court correctly dismissed Petitioner's complaint with prejudice because Petitioner violated Orders of the District Court

and the Federal Rules of Civil Procedure. The Eighth Circuit, *per curiam,* affirmed the District Court dismissal with prejudice and assessed double costs of the appeal against Petitioner.

This case involves claims made by the Petitioner to real estate situated entirely in the State of Iowa. The real estate is riparian to three adjacent bends in the Missouri River described (from south to north) as Blackbird Bend, Monona Bend, and Omaha Mission Bend. On May 19, 1975, the United States of America filed a complaint in *U.S v. Wilson, et al.,* C75-4024, U.S.D.C. N.D. Ia., claiming on behalf of the Omaha Tribe title and possession to real estate within the original boundary of the Omaha Tribe Reservation in the most southerly of the bends, Blackbird Bend. This complaint did not claim title or possession on behalf of the Omaha Tribe to real estate outside the original boundary of the Omaha Reservation. (Pet. App. "L", p. 150a). About five months later, on October 6, 1975 the Omaha Tribe filed its complaint (Pet. App. "K", p. 143a) in *Omaha Indian Tribe v. Agricultural & Industrial Investment Company,* C75-4067, U.S.D.C. N.D. Ia., claiming by way of an action at law for ejectment [U.S. Crt. App. 8th Cir. Opinion – No. 90-2133 *Omaha Indian Tribe v. Agricultural & Industrial Investment Company,* decided May 28, 1991 – (Pet. App. "F", 40(a), at 44(a), hereafter "Eighth Circuit Opinion at ___" or "Opinion below at ___"], title to about 11,000 acres of real estate, including all the real estate described in the case filed five months earlier.

In an order (Pet. App. "M", p. 156a, 158a) entered April 5, 1976 by the District Court in both cases (C75-4024 and C75-4067) the District Court, *inter alia* sensibly

required that C75-4024 would be tried to the Court first, noting it was an equitable proceeding since the Omaha Tribe claimed or was in possession of the land in Blackbird Bend within the original reservation boundaries. The Omaha Tribe was not in possession of any of the land it claimed outside the original reservation boundaries in any of the bends, and as to such, trial was to be to a jury. The Omaha Tribe filed no objection to or appeal from the April 5, 1976 order entered in C75-4067. On September 28, 1988 in C75-4067, Petitioner filed a motion (Pet. App. "R", p. 179a) as to the land in Blackbird Bend only, seeking an adjudication that as to Blackbird Bend land outside the original reservation boundary the decision of the District Court in C75-4024 was *res judicata*, and alleged in part (after about 12 years had passed) that there was "fraud" in the filing of C75-4024. Parenthetically it should be noted Petitioner's present counsel played an active role for twelve years in the trial of C75-4024, and all the subsequent appeals arising therefrom, including the appeals to this Court (*Wilson v. Omaha Tribe*, 422 U.S. 653 (1979); Pet. App. "I", p. 61a, 64a). On October 5, 1989 the District Court in C75-4067 entered an Order granting a motion *in limine* of certain defendants precluding Petitioner and its counsel at trial from communicating to the jury references to a "constricted complaint" or any other direct or indirect reference to Petitioner's "fraud claim". Pet. App. "V", p. 217a, 219a. In its order the District Court observed the Eighth Circuit had found the "fraud claim" without merit and this Court had denied certiorari as to that decision.

After District Court Judge McManus recused himself, the case was assigned to Judge Urbom by the Eighth

Circuit. On May 7, 1990 Judge Urbom filed a "Memorandum and Order on Plaintiff's Proposed Pretrial Order and on Defendants' Motions to Dismiss" (Pet. App. "B", p. 2a) and on May 4, 1990 a "Memorandum and Order on Sanctions Regarding Pretrial Conferences of August and September 1989" (Pet. App. "C", p. 18a). Therein Judge Urbom meticulously detailed the misconduct of Petitioner and its Counsel. Nothing is served by again itemizing such here, but one paragraph is instructive:

> On September 29, 1989, Judge McManus considered the plaintiff's appeal of the magistrate's order of June 6, 1989, that prohibited the plaintiff from calling additional expert witnesses. (Filing 370). The judge concluded that the magistrate had been correct in finding that the plaintiff had failed to provide any meaningful statement of opinions and facts about which the experts were expected to testify and had failed to provide a summary of the grounds for each expert's opinion. It found that "[t]he Tribe has violated both the letter and the spirit of FRCP 27(b)(4)". Notwithstanding this fact, the court reversed the sanction imposed on the ground that the plaintiff had disclosed the names of its experts and that the defendants were familiar enough with the litigation that they would not be severely prejudiced by allowing the plaintiff's additional experts to testify.[1] The court

---

[1] Judge McManus was mistaken in suggesting the defendants in Monona and Omaha Mission Bends were "familiar" with the litigation or would not be "prejudiced" by allowing Petitioner's experts to testify concerning the two northerly bends. The fact is nothing of substance had been disclosed by

(Continued on following page)

also noted that the proposed pretrial order which was to have been filed by the plaintiff on or before September 25, 1989, had not been filed. The plaintiff had instead filed a motion to reconsider the magistrates order of September 13, 1989, which had directed the plaintiff to file the proposed pretrial order by September 25, 1989. (Filing 347). In response to this motion Judge McManus stated:

> The Tribe's dismal history of noncompliance with the orders of this court is well documented. The Tribe's failure to submit the revised proposed final pretrial order on time is yet another example of its noncompliance. The mere filing of the Tribe's motion did not stay or extend the deadline, and the Tribe relies upon such tactics at its peril. This matter shall be dismissed with prejudice unless by not later than noon, Monday, October 17, 1989, the Magistrate has received from the Tribe the previously required revised proposed final pre-trial order in the form required by this court. The Tribe is warned that no intervening motion shall operate to stay or extend this deadline. (Filing 370, p. 4)

(Continued from previous page)

Petitioner as to the basis for its claims in those bends. What Petitioner did disclose as to the basis of its claims in Monona and Omaha Bends before its experts were deposed proved to be what could reasonably be described as deliberately misleading. Pet. App. pp. 31a-33a. (Judge Urbom's 5/29/90 Order). Petitioner's blatant mockery of the discovery process by concealing the real basis for its claims in Monona Bend would alone warrant dismissal with prejudice.

> The court then ordered that the matter would be dismissed in its entirety, with prejudice, if the above-quoted requirements were not met. (Filing 370).

Pet. App., pp. 10a-11a.

Petitioner never filed the required revised proposed final pretrial order.

In his Memorandum of May 7, 1990, Judge Urbom listed the sanctions he could impose, noting: "Although Judge McManus' order decreed dismissal with prejudice, I think I must explore all other options because of the drastic nature of dismissal with prejudice." Pet. App., p. 17a. Hearing was scheduled May 15, 1990, pursuant to agreement of all counsel. Pet. App., p. 39a. On May 29, 1990 Judge Urbom filed "Memorandum and Order on Sanctions Pursuant to the May 15, 1990, Hearing" whereby Petitioner's complaint in C75-4067 was dismissed with prejudice. Pet. App. "E", p. 24a. Two paragraphs in Judge Urbom's May 29, 1990 order demonstrate the cavalier attitude of Petitioner and its counsel concerning the Federal Courts and the judicial process.

> The parties [on May 15, 1990] were given an opportunity to argue their positions on the sanctions each felt would be appropriate. The defendants were unanimous in their opposition to any sanction other than dismissal. The plaintiff suggested no sanction; it simply opposed any sanction.
>
> . . . .
>
> Previous sanctions have failed to ensure compliance with the orders of this court. Monetary sanctions have not been successful in inducing

> compliance. The plaintiff and its counsel have only recently satisfied their obligations to pay monetary sanctions as ordered by the court in the consolidated case in 1987. On May 10, 1990, the plaintiff paid $44,865.53 to the clerk of the court. On the same date plaintiff's counsel paid $3,309.70. These amounts are reflected in Judge McManus' order that is attached to my May 7 1990, memorandum. The plaintiff and its counsel are now also jointly liable for sanctions in the amount of $24,205.27 for their lack of preparedness at the preliminary pretrial conferences held on August 22-23, 1989. Counsel for plaintiff declared at the May 15, 1990, hearing that he had no intention of paying any of the $24,205.27 because of the fraud practiced on the Tribe, and that he is willing to go to jail instead.
>
> Pet. App. pp. 34a-36a.

Judge Urbom's "Order on Sanctions", dated May 24, 1990, filed May 29, 1990, required Petitioner and its counsel to pay $24,205.27 " . . . to the Clerk of the United States District Court for the Northern District of Iowa, Western Division by no later than 90 days from the date of this order." Pet. App. "D", p. 23a.

No part of the $24,205.27 has ever been paid. No bond has been posted by Petitioner or its counsel pending appeal to assure payment.

By *per curiam* opinion[2] the Eighth Circuit affirmed Judge Urbom's Order filed May 29, 1990. (Pet. App. "F",

---

[2] The Petition strangely refers to the *per curiam* opinion as "Judge Lay's opinion", e.g. Pet. pp. 8, 9, 10, 21, 22. Oral argument was heard by Judges Magill, Laken and Chief Judge Lay. The opinion is reported at 933 F.2d 1462.

p. 40a). Rehearing *en banc* was denied July 31, 1991. Pet. App. "G", p. 59a. Petition for Certiorari was served September 23, 1991.

REASONS FOR DENYING THE WRIT

The Court of Appeals' *per curiam* decision does not warrant review. The appeal sought would have this Court review findings of fact made by the U. S. Magistrate for the Northern District of Iowa; District Court Judges McManus and Urbom; and determine whether the Court of Appeals properly found Judge Urbom did not abuse his discretion in dismissing the case, all based on review of factual matters. Further, the appeal sought would in substance constitute a grant of certiorari on the same issue as to which certiorari was earlier denied. *See Omaha Indian Tribe v. Jackson*, 854 F.2d 1089, 1092, n. 4; cert. denied 490 U.S. 1090, 109 S.Ct. 2429 (5/30/89).

The petition's true challenge is simply to the factual basis of the Eighth Circuit's decision. The record contains ample, probably overwhelming, support for the Eighth Circuit's decision. A petition based exclusively on Petitioner's bizarre assessment of the facts, is not appropriate for review in this Court.

ARGUMENT

I.

THE EIGHTH CIRCUIT COURT OF APPEALS DID NOT ERR IN CONCLUDING THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DISMISSING WITH PREJUDICE PETITIONER'S COMPLAINT.

"FRAUD"

Initially mention may be made of Petitioner's claim of "fraud". It should be observed Petitioner's "fraud" claim does not in any manner affect real estate claimed by Petitioner in Monona Bend or Omaha Mission Bend where most of the land still claimed by Petitioner is located. Nevertheless, Petitioner's cry of "fraud" has been used by Petitioner as an attempt to stall the entire case. As the District Court observed in its Order entered May 29, 1990:

> In response to the defendants' charges that it [plaintiff] improperly resisted discovery procedures, the plaintiff explains that the court forced discovery on it before the exhaustion of its appeal in the [Blackbird Bend] consolidated case. The plaintiff had appealed from the May 30, 1987, final judgment [involving Blackbird Bend], and asserted, among other things, that the judgment was the product of the forced, fraudulent representation on the Tribe and that plaintiff was being forced to retry title to approximately 3500 acres of land [in Blackbird Bend] outside the Barrett Meander Line. It argues that this court, in total disregard of the plaintiff's right to be heard on appeal and at the behest of the defendants, ordered the plaintiff to engage in discovery while the appeal was still

> pending. By forcing the plaintiff to comply with discovery processes, it says, the defendants obtained great advantages over the plaintiff by constantly threatening it with sanctions. Unless and until the U. S. Supreme Court refused to hear plaintiff's charges (which occurred on May 30, 1989), the plaintiff argues that it should not have been coerced into participation in discovery.
>
> I do not agree that the filing of an appeal relating to the Blackbird Bend area within the Barrett survey proscribes the continuing process of discovery as to Blackbird Bend land outside the Barrett survey or to land in Monona or Omaha Mission Bends. The pendency of an appeal in the consolidated portion of this case is not a valid excuse for plaintiff's resistance to participation in discovery relating to the unconsolidated portion of this case.
>
> Pet. App. "E", pp. 24a, 29a.

Respondents Agricultural & Industrial Investment Company and Rupp were not involved in the trial or appeals of the Blackbird Bend case and had no knowledge of how or why Petitioner was claiming their land in Monona Bend. Other respondents in Monona and Omaha Mission Bends were in the same predicament, which Petitioner and its counsel exploited.

It is obvious the claim of "fraud" is a canard, lacking legal or factual substance in any respect, particularly as to Petitioner's claims in Monona and Omaha Mission Bends. Significantly, the velocity of Petitioner's claims of "fraud" has a direct correlation to its counsel's growing realization that the U.S. Department of Justice correctly concluded the only plausible case to be asserted on behalf

of Petitioner was to unpatented land within the original boundaries of the reservation. The unvarnished fact that Petitioner and its counsel erred as to Petitioner's rights to patented land, is the true reason for Petitioner's belated claims of "fraud".

"Fraud" is not an issue in this case. This Court should not grant certiorari to again verify for Petitioner its claim of "fraud" is a sham. Save for the direction of Sup. Ct. R. 15.1, Respondents would not dignify Petitioner's claims of "fraud" by mention in this brief. "[T]he brief in opposition should address any perceived misstatements of fact or law set forth in the petition which have a bearing on the question of what issues would properly be before this Court if certiorari were granted." Sup. Ct. R. 15.1.

The Eighth Circuit properly reviewed the District Court's decision to dismiss under the abuse of discretion standard. *Garrison v. International Paper Co.*, 439 F.2d 95 (8th Cir. 1983); *Moore v. St. Louis Music Supply Co., Inc.*, 539 F.2d 1191 (8th Cir. 1976).

The *per curiam* opinion demonstrates the Eighth Circuit exhaustively reviewed the record in the District Court and found there was no abuse of discretion. It is not the purpose or function of the writ in this Court to review factual disputes asserted by a disappointed litigant. Sup. Ct. R. 10.1 recites a petition for writ of certiorari will be granted only for special or important reasons, and none of the reasons described in Sup. Ct. R. 10.1(a)-(c) are involved in this Petition.

The most one may claim is the Petition is "special" because of its intemperance, warranting denial for that

reason alone as more fully discussed in part III of this brief.

The Court has always taken the position this kind of case is not appropriate for review.

> Granting of the writ would not be warranted merely to review the evidence or inferences drawn from it.
>
> *General Talking Pictures Corp. v. Western Electric Co.*, 304 U.S. 175, 178 (1938).
>
> But this Court does not sit to satisfy a scholarly interest in such issues. Nor does it sit for the benefit of the particular litigants. [citations omitted] "Special and important reasons" imply a reach to a problem beyond the academic or the episodic.
>
> *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 74 (1955). (Frankfurter, J. – vacating judgment and dismissing writ improvidently granted).

Any law clerk or judge reading this brief need not be reminded the Court bears a well-documented heavy workload. Hart, *The Supreme Court, 1958 Term – Forward: The Time Chart of the Justices*, 73 Harv. L. Rev. 84 (1959); Baker & McFarland, *The Need for a New National Court*, 100 Harv. L. Rev. 1400 (1987). It is unthinkable this petition, involving only a disappointed litigant's strident factual distortions, is worthy of conference consideration or should be added to the Court's burden.

In sum, this case is singularly inappropriate for hearing by the Court. The Petitioner's claims of "fraud" lack one iota of legal or factual basis. The Petition demonstrates Petitioner is again seeking a factual review. This

Court declined to do so earlier and there is no reason for a review now.

II

THE EIGHTH CIRCUIT COURT OF APPEALS CORRECTLY ASSESSED AGAINST PETITIONER DOUBLE COSTS OF THE APPEAL.

The Eighth Circuit Opinion sets out the intemperance of the Petitioner in that Court:

> In its brief on appeal, the Tribe argues that the Department of Justice attorneys who represented the United States as trustee for the Tribe participated in fraud by limiting the Tribe's claims in the earlier action to land inside the Barrett Survey in Blackbird Bend. The Tribe also contends that Judge McManus "fully supported" and "effectuated" the fraud practiced on the Tribe by "forcing upon . . . [the] Tribe the rejected representation" of the Department of Justice attorneys. Appellant's Brief at iv, 8. The Tribe further argues that the Tribe was denied "its Constitutional right of due process to initiate its own lawsuit and to prosecute that lawsuit" as a result of Judge McManus's alleged judicial misconduct, *Id.* at v. The Tribe also alleges that Judge Urbom became a "participant in the judicial cover-up of the fraud" by refusing to address the charges against Judge McManus. *Id.* at 24-25. The Tribe contends that Judge Urbom "adopt[ed] Judge McManus[']s violations of judicial integrity and embrac[ed] the false and perverted charges made by the . . . [defendants] and Judge McManus against . . . [the] Tribe." *Id.* at 25. The Tribe further alleges that Judge Urbom's "bias and prejudice against . . . [the] Tribe" surfaced in his May 29, 1990

order. *Id.* at 34. The Tribe concludes that "[t]he bias, prejudice, and aggressive partiality for the . . . [defendants] by Judge Urbom and Judge McManus in accepting . . . [the defendants] charges against . . . [the] Tribe . . . while completely denying . . . [the] Tribe the right to be heard and [the right] to refute those charges . . . is the very essence of denial of Due Process." Appellant's Reply Brief at 20.

In *Omaha Indian Tribe v. Jackson*, 854 F.2d at 1092 n. 4, we held that the Tribe's claim that the Department of Justice attorneys participated in fraud was without merit. Moreover, when the Tribe petitioned this court for a writ of mandamus alleging fraud, we dismissed the Tribe's petition as "frivolous and totally without merit" and sanctioned the Tribe's counsel by awarding the United States costs and attorney's fees. *In re Omaha Indian Tribe*, No. 86-1717 (8th Cir. July 18, 1986) (order denying petition for writ of mandamus). This court has ruled on the Tribe's fraud claim and our prior decisions now stand as the law of the case. *See Little Earth of the United Tribes, Inc. v. United States Dep't of Hous. & Urban Dev.*, 807 F.2d 1433, 1440-41 (8th Cir. 1986) (finding law of the case doctrine prevents relitigation of settled issues).

Opinion below at Pet. App. 50a-51a (footnote omitted)

Almost all of the Appellees in the Eighth Circuit argued by their briefs that the scandalous attacks by Petitioner on the integrity of Judge McManus and Judge Urbom required sanctions to be imposed under F. R. App. P. 38. The Eighth Circuit refused to impose sanctions of any consequence save taxing double costs. "We also

assess double the costs of this appeal against the Tribe for raising the frivolous fraud issue". Opinion below at Pet. App. 58a.

This inconsequential sanction is amply supported by the record. As the Petition filed in this case reflects, Petitioner learned nothing from earlier sanctions or the modest sanctions imposed by the Eight Circuit; however, no reasonable person may dispute the sanction assessed on appeal was warranted.

III

THIS COURT SHOULD IMPOSE SANCTIONS AGAINST PETITIONER AND ITS COUNSEL FOR SCANDALOUS STATEMENTS IN THIS PETITION FOR WRIT OF CERTIORARI.

Sup. Ct. R. 24.6 provides:

> A brief must be compact, logically arranged with proper bindings, concise and free from burdensome, irrelevant, immaterial, and scandalous matter. A brief not complying with this paragraph may be disregarded and stricken by the Court.

The Petition is not concise, under Rule 24.6, nor is the statement of the case concise as required by Sup. Ct. R. 14.1(g). It contains approximately six pages (8-14) of a "Certificate" of counsel. The "Statement of the Case" meanders for eleven pages (7-18).

The Petition is replete with scandalous matters:

1. Page 8 – Judge Lay made "false, indeed felonious, charges" against Petitioner's counsel.

2. Page 8 – The Opinion below contains "infamous, false, and fabricated charges" against Petitioner's counsel.

3. Page 10 – Judge Lay "castigated" Petitioner and its counsel.

4. Page 11 – Judge Lay made a "false and fabricated charge".

5. Page 11 – Evan L. Hultman filed a "fraudulent and contrived complaint" in U.S. District Court.

6. Page 13 – The motion *in limine* filed by the State of Iowa was a request for a "gag" order.

7. Page 15 – Judge Urbom's conduct was "belated and self-serving".

8. Page 19 – Judge McManus entered a "gag" order.

9. Page 21 – Evan L. Hultman's conduct was a "shocking violation of the judicial processes".

10. Page 22 – Judge Lay exhibited "aggressive hostility" against Petitioner's counsel.

11. Page 24 – "Aggressive attacks" were made upon Petitioner's counsel.

Though not stated by the Magistrate or any of the Judges who considered the accusations and conduct of Petitioner's counsel, one must reluctantly surmise they indulged counsel's intemperance because were they to correct him, such would fuel the fire for even more scandalous attacks against them.

The Iowa Code of Professional Responsibility for Lawyers, Ethical Consideration 9-6 provides in part:

"Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof;. . . ." This Court should not impose a lesser standard on Petitioner's counsel. By any objective standard Petitioner's counsel has been grossly disrespectful to both the District Court and the Court of Appeals. The caustic language in the Petition concerning lawyers and Federal judges must not be tolerated in our judicial system. Should this Court tolerate such language the inevitable result is a decline in the stature of courts and judges everywhere.

In denying the Petition it is respectfully urged this Court should state: "The petition is denied for failure to comply with Sup. Ct. R. 14.1(g), 24.6 and is stricken from the court file."

CONCLUSION

The petition for writ of certiorari should be denied and stricken from the court file.

Respectfully submitted,

Dated: October 17, 1991

GEORGE F. MADSEN
MARKS & MADSEN
Suite 303,
700 Fourth Street
P.O. Box 3226
Sioux City, IA 51102
712/258-1200

Counsel for Agricultural & Industrial Investment Company

PETER J. PETERS
233 Pearl Street
P.O. Box 938
Council Bluffs, IA 51502
712/328-3157

Counsel for Donald L. Rupp

APPENDIX A

If a Court of Appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

F. R. App. P. 38